

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-cv-329-GKF(SAJ)
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**STATE OF OKLAHOMA'S RESPONSE TO BRIEF OF  
*AMICUS CURIAE* THE STATE OF ARKANSAS [DKT #1543]**

Comes now Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), and responds to the brief of *amicus curiae* the State of Arkansas [DKT # 1543].

1. The brief of *amicus curiae* the State of Arkansas is largely duplicative of arguments raised Defendants' responses to the State's Motion for Preliminary Injunction. Accordingly, the State:

a. Incorporates the State of Oklahoma's Motion for Preliminary Injunction and Integrated Brief in Support Thereof [DKT #1373], pp. 4-6 & 12-13, and the State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 1-5, wherein the State demonstrates that poultry waste is, indeed, a "solid waste" within the meaning of RCRA.<sup>1</sup>

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<sup>1</sup> In its effort at applying the test to determine whether a material is "discarded" that is set out in *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1043 (9th Cir. 2004), Arkansas ignores the fact that under *Safe Air* the material at issue must be destined for beneficial reuse or

b. Incorporates the State of Oklahoma's Reply to Defendants' George's Inc.'s and George's Farms, Inc.'s Separate Response Brief in Opposition to Plaintiff's Motion for Preliminary Injunction, pp. 3-5, and the State of Oklahoma's Reply to "Defendants' Memorandum in Opposition to Plaintiffs' [sic] Motion for Preliminary Injunction" [DKT #1564], pp. 18-19, wherein the State demonstrates that the law is well-established that an imminent and substantial endangerment claim under 42 U.S.C. § 6972(a)(1)(B) is not superseded by state environmental laws. Thus, to the extent it is Arkansas's contention that its regulatory regime concerning the handling of poultry waste allows for the creation an imminent and substantial endangerment, such regulatory regime must yield to 42 U.S.C. § 6972(a)(1)(B).

2. 42 U.S.C. § 6972(a)(1)(B) "is intended to confer upon the courts the authority to grant affirmative equitable relief to the extent necessary to eliminate any risk posed by toxic wastes." *Burlington Northern & Santa Fe Railway Co. v. Grant*, 505 F.3d 1013, 1020 (10th Cir. 2007). Thus, contrary to Arkansas's suggestion, the conduct at issue in the State's Motion for Preliminary Injunction is not "currently legal" under federal law. It must be enjoined.

### Conclusion

The reasoning of Arkansas's *amicus curiae* brief is legally flawed, and therefore it should be accorded no weight. The State's Motion for Preliminary Injunction should be granted.

Respectfully Submitted,

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recycling in a continuous process by the generating industry itself. See *Safe Air*, 373 F.3d at 1043 fn. 8 ("the [bluegrass] Growers argue that grass residue is not solid waste because they immediately reuse it to further successful bluegrass harvests"); 373 F.3d. at 1043 ("The Growers presented evidence that they do not discard the grass residue, but rather reuse grass residue in a continuous process of growing Kentucky bluegrass"). Poultry waste, however, is not reused in the poultry growing process. Moreover, Arkansas ignores the fact that the material also has to in fact be appropriately reused, not merely have the potential of being appropriately reused.

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